

## **MINUTES OF JUNE 2, 2014**

The regular meeting of the Sussex County Board of Adjustment was held on Monday, June 2, 2014, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Brent Workman, Mr. Jeff Hudson, and Mr. Norman Rickard, with James Sharp – Assistant County Attorney, and staff members, Mr. Lawrence Lank – Director of Planning and Zoning, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously to approve the Minutes and Finding of Facts for April 21, 2014 as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to approve the Minutes and Finding of Facts for May 5, 2014 as circulated. Motion carried 5 – 0.

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

### **PUBLIC HEARINGS**

**Case No. 11395 – Harriett M. Ward** – southeast of Ward Road (Road 283A) 0.4 mile southwest of Cedar Grove Road (Road 283). (911 Address: 20009 Ward Road, Lewes, Delaware) (Tax Map I.D. 3-34-11.00-99.00)

An application for a variance from the front yard setback requirement.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application. Mr. Lank advised the Board that an error was found in the building permit as an incorrect setback was used due to a discrepancy in the zoning maps.

Harriett Ward was sworn in and testified requesting a variance of eighteen (18) feet from the forty (40) feet front yard setback requirement for an existing dwelling, steps, and landing; that the front yard setback requirement noted on her building permit was incorrect; that she believed that the setback requirement was thirty (30) feet when it was actually forty (40) feet; that she built the dwelling based on the thirty (30) feet setback line; that she was not aware of the mistake until they received a letter from the Sussex County Zoning Inspector of the encroachment; that Property is only eighty-eight (88) feet deep which makes it unique; that the Property is also unique because it is wide in the front; that the size of the lot makes it difficult to build in strict conformity with the Sussex County Zoning Code; that the difficulty was not created by the Applicant; that the variance

will not alter the essential character of the neighborhood; that the use will not be detrimental to the public welfare; that the variance will enable reasonable use of the Property; and that the variance is the minimum variance to afford relief.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11395 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its shallow depth;
2. The Property cannot be developed in strict conformity with the Sussex County Zoning Code;
3. The variance is necessary to enable reasonable use of the Property;
4. The difficulty was not created by the Applicant;
5. The variance will not alter the essential character of the neighborhood; and
6. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, Mr. Hudson – yea, and Mr. Callaway – yea.

**Case No. 11396 – Thomas F. Dunkin & Bettie J. Dunkin** – north of Route 26 (Vines Creek Road) and being north of Arrow Drive, 107.14 feet east of Trails End and being more specifically Lot 3 Block Q in Blackwater Village Subdivision. (911 Address: 34023 Arrow Drive, Dagsboro, Delaware) (Tax Map 1-34-11.00-263.00)

An application for a variance from the front yard setback requirement.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Thomas Dunkin and Bettie Dunkin were sworn in to testify about the Application. Raymond Tomasetti, Esquire, presented the case to the Board on behalf of the Applicant and submitted exhibits and one (1) letter of support for the Board to review.

Mr. Tomasetti stated that the Applicants were requesting a variance of 7.5 feet from the thirty (30) feet front yard setback requirement for an existing porch and a variance of 1.6 feet from the thirty (30) feet front yard setback requirement for an existing dwelling; that the Applicants recently purchased the Property; that the previous owner was likely unaware of the encroachments;

that the Property has an existing wetland area and that area cannot be built upon; that the house and the porch encroach into the setback area; that there are only three (3) dwellings on the street; that a neighbor across the street does not object to the Application; that the wetlands make the Property unique; that the difficulty was not created by the Applicants; that the variances will not alter the essential character of the neighborhood; and that the dwelling was built in 1984 and an existing detached garage was built in 1987.

Mr. and Mrs. Dunkin, under oath, confirmed the statements made by Mr. Tomasetti.

Mr. Dunkin testified that there is no buildable area east of the house; that the road is a dead end road; that a retaining wall made of wood separates the upland from the marshland; and that all neighbors support the Application.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11396 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The existence of the wetlands and shape of the Property make it unique;
2. The variances are necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicants as a previous owner placed the dwelling and porch on the Property;
4. The variances will not alter the essential character of the neighborhood;
5. The variances sought are the minimum variances necessary to afford relief; and
6. The variances represent the least modifications of the regulations at issue.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11397 – Scott Crawford** – south of Road 277 (Angola Road) and being south of Montgomery Court, 570 feet east of Suburban Boulevard and being more specifically Lot 8 Phase 3 Angola Estates. (911 Address: 33621 Montgomery Court, Lewes, Delaware) (Tax Map I.D. 2-34-12.00-7.00-Unit 47519)

An application for a variance from the rear yard setback requirement.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application

Mr. Rickard asked Mr. Lank if a side yard variance is necessary as well. Mr. Lank said that he would research the matter.

Scott Crawford was sworn in and testified requesting a variance of 4.2 feet from the five (5) feet rear yard setback requirement for an existing shed; that his mother owned the Property since 1992 and left the dwelling to him; that he recently replaced her shed with the shed he had on another lot in the development; that his shed is larger than the previous shed; that he was not aware his property line curved; that he also didn't realize a portion of the rear yard he maintains was not his property; that there is a natural buffer between his lot and the neighbor's lot; that the recent survey showed the encroachment; that the shed cannot be moved closer to the dwelling and still be accessed; that there are also large trees and existing sidewalks on the Property which prevent turning the shed on the Property; that moving the shed closer to his neighbor would be out of character with the neighborhood; that the neighbor to the rear of his property has no objection to the Application; that the shed is on footers; that the previous shed was placed on the Property in 1992; and that the new shed was placed on the same spot as the older shed but it extends further into the rear yard. Mr. Crawford submitted one (1) letter of support from the community manager.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11397 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The odd shape of the Property and situation make the lot unique;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The variance is necessary to enable reasonable use of the Property;
4. The difficulty was not created by the Applicant;
5. The Applicant believed that the shed was in compliance with all regulations;
6. The variance will not alter the essential character of the neighborhood; and
7. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, Mr. Hudson – yea, and Mr. Callaway – yea.

**Case No. 11398 – Coastal Club, LLC** – southeast of Road 285 (Beaver Dam Road), 4,520 feet southwest of Road 285A (Jimtown Road). (911 Address: not available) (Tax Map I.D. 3-34-11.00-396.00)

An application for a special use exception to place two (2) manufactured home type structures for temporary sales and rental offices.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Travis Scott Warnock was sworn in and testified requesting a special use exception for use of two (2) manufactured home type structures for temporary sales and rental offices; that the units will be used by Beazer Homes and NV Homes; that the units will be needed as sales offices for approximately eight (8) months until the model homes can be constructed; that the site work is currently under way; that the office style units measure twelve (12) feet by fifty-four (54) feet; that each unit will have office space on each end with a showroom in the center; that the units will have no cooking facilities but will have bathrooms and will be handicap accessible; that there will be seventeen (17) parking spaces available; that the units will have landscaping around them; that the units will be newer models; that the use will not substantially adversely affect the neighboring and adjacent properties; that nearby properties are used for agricultural purposes, an Elks Lodge, and a few single family homes. Mr. Warnock submitted exhibits to the Board for review which included an entrance permit from the Delaware Department of Transportation.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception Application No. 11398 for the requested special use exception based on the record made at the public hearing because the use does not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the special use exception be **granted for a period of one (1) year for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11399 – Chester Townsend** – west of Road 341 (Falling Point Road), 0.25 mile north of Road 341A (Ballast Point Road). (911 Address: 32423 Falling Point Road) (Tax Map I.D. 1-34-6.00-161.04)

An application for a special use exception to place a manufactured home type structure for medical hardship.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Shirley Townsend was sworn in and testified requesting a special use exception to place a manufactured home type structure for a medical hardship; that the doublewide unit will measure twenty-eight (28) by thirty-eight (38) feet and is a brand new unit; that her mother will reside in the unit; that the unit will be placed on the Property near her home and other outbuildings; that the unit will look similar to the other buildings on the Property; that the unit will be skirted; that the unit will likely not be seen from the road; and that the unit will not substantially affect adversely the uses of adjacent and neighboring properties.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception Application No. 11399 for the requested special use exception based on the record made at the public hearing because the use does not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted for a period of two (2) years and for the reasons stated.** Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11400 – Andrew Hunnicutt** – north of Road 231 (Reynolds Pond Road) 400 feet east of Road 212 (Cedar Creek Road). (911 Address: not available) (Tax Map I.D. 2-35-7.00-23.14)

An application for a special use exception to place a multi-sectional manufactured home type structure that is more than five (5) years old.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Andrew Hunnicutt was sworn in and testified requesting a special use exception to place a multi-sectional manufactured home type structure that is more than five (5) years old; that due to a recent divorce he is looking to relocate; that the purchase of this property is pending on the approval of the Board; that he owns the 2002 manufactured home he plans to place on the Property; that the proposed unit will not substantially adversely affect the uses of neighboring and adjacent properties; that there are similar homes in the area; that the unit will fit with the character of the neighborhood; and that the unit will comply with Sussex County requirements. Mr. Hunnicutt submitted pictures for the Board to review.

The Board found that one (1) party appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception Application No. 11400 for the requested special use exception based on the record made at the public hearing because the use does not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, Mr. Hudson – yea, and Mr. Callaway – yea.

**Case No. 11401 – Randy Hitchens and Tracie Hitchens** – south of Road 324 (Sussex Pines Road) and being north of Putter Lane and east of Fairway Avenue and more specifically Lot 64 in Country Club Estates Subdivision. (911 Address: 22525 Putter Lane, Georgetown, Delaware) (Tax Map I.D. 1-35-23.00-147.00)

An application for a variance from the side yard setback requirement.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Mr. Sharp advised the Board that his firm has represented the Applicant in the past and that if the Board had any questions, they should direct them to Vince Robertson, Esquire.

Tracie Hitchens was sworn in and testified requesting a variance of three (3) feet from the fifteen (15) feet side yard setback requirement for an existing dwelling. Ms. Hitchens submitted exhibits to the Board to review. Ms. Hitchens testified that the dwelling was constructed twelve (12) years ago; that they discovered, during the process of refinancing their loan, that the dwelling encroached into the side yard setback area; that a Certificate of Compliance was issued for the dwelling in 2002; that the corner lot is unique; that the variance will enable reasonable use of the Property; that the difficulty was not created by the Applicants; that the variance does not alter the essential character of the neighborhood; that variance is the minimum variance to afford relief; that the Applicants are not seeking to make any additions to the dwelling; that the Applicants relied on a builder to place the dwelling and assumed that the dwelling was placed properly; that the survey from 2002 is not clear as it appears that the dwelling is eighteen (18) feet from the side property line when it is actually twelve (12) feet; and that the adjacent property is vacant.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11401 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is a corner lot which makes it unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood;
5. The variance sought is the minimum variance necessary to afford relief; and
6. The variance requested represents the least modification of the regulation at issue.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11402 – Thomas Camera & Gaylen Camera** – south of Road 357 (Fred Hudson Road) and being south of Bethany Loop and across from Cattail and being Lot 378 within The Salt Pond Community. (911 Address: 668 Bethany Loop, Bethany Beach, Delaware) (Tax Map I.D. 1-34-13.00-1550.00)

An application for a variance from the side yard setback requirement.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had received one (1) letter of support to the Application and had not received any correspondence in opposition to the Application.

Gaylen Camera was sworn in and testified requesting a variance of 1.4 feet from the ten (10) feet side yard setback requirement; that the dwelling was constructed in 1994; that the Certificate of Compliance was issued in 1995; that she is the third owner of the Property since the dwelling was constructed; that the dwelling is 1.4 feet too close to the side yard property line on the southwest side of the Property; that she is in the process of selling the Property and a recent survey showed the encroachment; that the Property is odd in shape being wide in the front and narrower towards the rear; that, if the bay window been constructed differently, the need for a variance would not exist; that the Property is located within the Salt Pond community and that there are no known issues with the community's architectural review committee; that the bay window is the only portion of the house located in the side yard setback area; that the dwelling is skewed slightly on the lot making it impossible to be built in strict conformity with the Sussex County Zoning Code; that the variance will enable reasonable use of the Property; that the Homeowners Association supports the Application; and that the variance will not alter the character of the neighborhood.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11402 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The odd shaped lot and placement of the dwelling make the Property unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood;
5. The variance is not detrimental to the public welfare; and
6. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, Mr. Hudson – yea, and Mr. Callaway – yea.

**Case No. 11402 – Heather Morgan & Allan Freedman** – 400 feet southwest of Route 1 (Coastal Highway) and being southeast of Elizabeth Avenue and being 500 feet northeast of Dodd Avenue and being more specifically Lot 13 and 15 Block D of Ann Acres Subdivision. (911 Address: 21069 Elizabeth Avenue, Rehoboth Beach, Delaware) (Tax Map I.D. 3-34-20.13-122.00)

An application for a variance from the front yard and side yard setback requirement.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application. Mr. Lank advised the Board that the Property will be subdivided into two (2) lots and that the shed will be removed.

Mr. Sharp advised the Board that his firm has represented the Applicant in the past and that if the Board had any questions, they should direct them to Vince Robertson, Esquire.

Allan Freedman was sworn in and testified requesting a variance of 7.4 feet from the thirty (30) feet front yard setback requirement for a dwelling, and a variance of 4.7 feet from the ten (10) feet side yard setback requirement for both side yards for a dwelling; that the existing dwelling was built in the 1960s by his wife's grandparents; that the grandparents purchased three (3) lots in 1959; that later an issue was discovered with the property markers and the dwelling straddled the property lines; that his wife's mother passed away in 2012 leaving the Property owned by six (6) heirs; that the Applicants purchased the Property from the remaining heirs; that they plan to subdivide the Property into two lots and to relocate the dwelling to Lot 15 and sell Lot 13; that the sale of Lot 13 will help them pay for the dwelling and keep the Property in the family; that the

house is a Cape Cod style house; that other houses in the neighborhood are much larger structures; that there is an existing half basement under the dwelling; that the Applicants plan to use a portion of the existing foundation and half basement when relocating the dwelling; that the proposed relocation of the dwelling will result in the least amount of disturbance to the Property; that moving the house into compliance with the setback requirements would result in the need to destroy the existing basement and foundation; that the proposed location of the dwelling will not further encroach on the front yard setback more than it already does; that the existing structure will not alter the character of the neighborhood; that there are other, more imposing, houses in the neighborhood; that the difficulty was not created by the Applicants; that the original surveyor made a mistake in surveying the lot, which caused the house to be placed incorrectly; that the use is not detrimental to the public welfare and will not impair the uses of neighboring and adjacent properties; that the front yard will be graveled for parking; and that the variances are the least modifications possible of the regulation at issue.

Mr. Freedman submitted exhibits and pictures for the Board to review.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Hudson stated that he would move that the Board recommend approval of Variance Application No. 11403 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique;
2. The house was originally to be constructed on the center lot but was not built there;
3. The difficulty was not created by the Applicants;
4. The variances are necessary to enable reasonable use of the Property;
5. The variances will not alter the essential character of the neighborhood; and
6. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

### **OLD BUSINESS**

**Case No. 11375 – Carolyn E. Ortwein & Ann S. Barry** – west of Silver Lake Road (Route 1A) 602 feet north of Pine Lane. (911 Address: 20398 Silver Lake Drive, Unit 4, Rehoboth Beach, Delaware) (Tax Map I.D. 3-34-20.09-125.00-Unit 4)

An application for a variance from the side yard setback requirement.

The Board discussed the case, which has been tabled since May 19, 2014.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11375 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The necessity for the elevator creates a unique situation;
2. The variances represent a reasonable accommodation to the Applicants;
3. The variances are necessary to enable reasonable use of the Property;
4. The difficulty was not created by the Applicants;
5. The variances will not alter the essential character of the neighborhood; and
6. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Rickard – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Meeting Adjourned 8:50 p.m.**